

RESOLUTION NO. 88-16

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI DELEGATING AUTHORITY TO THE CITY MANAGER PURSUANT TO SECTION 21034 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA TO MAKE DETERMINATIONS REGARDING INDUSTRIAL DISABILITY RETIREMENTS THEREUNDER, TO ESTABLISH A PROCEDURE INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS, AND RESCINDING RESOLUTIONS NO. 4034

WHEREAS, the City of Lodi (hereinafter referred to as agency) is a contracting agency of the Public Employee's Retirement System;

WHEREAS, the Public Employees Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employee's Retirement Law and whether such disability is "industrial" within the meaning of such law.

WHEREAS, the City Council has determined upon legal advice that it may delegate authority under Section 21034 of the Government Code to make such determinations to the incumbent of the office of City Manager.

NOW, THEREFORE, BE IT RESOLVED, that the City Council delegate and it does hereby delegate to the incumbent of the office of City Manager authority to make determinations under Section 21023(c), Government Code, on behalf of the agency, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement System; and,

BE IT FURTHER RESOLVED, that the City Manager is authorized to make applications on behalf of the agency for disability retirement of employees in employments in which they are local safety members and to initiate requests for reinstatement of such employees who are retired for disability.

BE IT RESOLVED FURTHER, that the disability retirement certification procedure for local safety members be as follows:

1. Determination of Disability. Whenever an application for disability retirement is filed with the Public Employees' Retirement System, (PERS), by any party, for disability retirement of a local safety member, as that term is defined by the applicable provisions of state law, the City Manager shall thereafter conduct a hearing to determine whether said employee is incapacitated physically or mentally for the performance of the duties of his/her position. When it is determined that said employee is so incapacitated, the City Manager shall further determine whether such incapacity is industrially related.

2. Representation at Hearing. The City shall be represented at said hearing by the Assistant City Manager. The employee shall have the right to be represented by himself or any other person he/she so selects.

3. Evidence of Disability. Prior to the notice of hearing, the City shall, upon receipt of an application for disability retirement of a member, order a medical and/or a psychiatric examination, to determine whether the member is incapacitated for the performance of duty. The results of the examination shall be submitted to, and considered by, the City Manager at said hearing. The employee shall have the right to submit any independent medical evidence at said hearing.

In addition, either party may submit any other and additional evidence, either oral or documentary, which is relevant to the determination as to whether the employee is incapacitated, physically or mentally, for the performance of the duties of his/her position.

4. Decision. Based upon the evidence presented, the City Manager shall determine whether such employee is incapacitated physically or mentally for the performance of the duties of his/her position, and whether such incapacity is a result of injury or disease arising out of and in the course of employment as a local safety member. If termination of employment for incapacity physically or mentally is made, such determination shall be certified to PERS which will then process the disability retirement.

5. Appeal. If the employee wishes to appeal the determination of capacity by the City Manager, he/she may file written notice of such appeal within 90 days requesting an administrative hearing before the Personnel Board of Review. The Personnel Board of Review procedures shall be in conformity with the Administrative Procedure Act in which an administrative record will be generated at the hearing. That body will review all evidence the City or the employee wishes to submit. The Personnel Board of Review retains the right to make factual determinations and render a final decision on the disability status of the employee. Following the conclusion of the hearing the Personnel Board of Review shall prepare the findings and transmit those findings by way of certification to PERS.

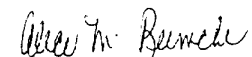
If the Personnel Board of Review determines that the employee is not incapacitated, and the employee wishes to appeal the ruling of the Board, he/she may file a petition for writ of mandate in the Superior Court of San Joaquin County within thirty days from date of the determination.

I hereby certify that the foregoing Resolution No.88-16 was passed and adopted by the City Council of the City of Lodi in regular meeting held February 3, 1988 by the following vote:

Ayes: Council Members - Hinchman, Pinkerton, Snider
and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - Reid


Alice M. Reimche
City Clerk